APR 18 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1943.

No. 809.

ROBERT F. KLEPINGER, *et al., Petitioners,*

vs.

FRED B. RHODES, *Respondent.*

BRIEF FOR RESPONDENT IN OPPOSITION TO CERTIORARI.

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Certiorari should be denied, for

(1) The decision relates to a matter of well established and fundamental law.

(2) The decision relates to a matter of local law of the District of Columbia.

(3) The decision is consistent with the decisions of this Court and correct.

(4) The case is moot.

The Proceedings on Which the Decision is Based.

Plaintiffs' suit in the District Court of the United States claimed $1,980.00. They charged the defendant upon a promise that when that amount came into his hands from fees earned by him in the prosecution of claims in the Court of Claims, he should hold it in trust for the plaintiffs and charged with a lien in favor of the plaintiffs. Defendant received the stated amount but refused, conditionally, plaintiffs' demand for performance of the trust and discharge of the lien. Plaintiffs demanded "appro-

priate process to the defendant requiring discharge or performance by him of the obligation of his trust" * * * "or, but only if such process is unavailing to effectuate such discharge or performance" for a money judgment.

Section 11-306, District of Columbia Code, 1940, grants to the District Court of the United States for the District of Columbia, cognizance of all cases in law and equity between the parties, R.S.D.C. sec. 763; Feb. 27, 1877, 19 Stat. 253, Ch. 69 sec. 2).

Section 11-755, District of Columbia Code, 1940, (Supp. 1943) established the Municipal Court for the District of Columbia and vested in that Court exclusive jurisdiction of civil actions in which the debt claimed does not exceed $3,000.00. (Act of April 1, 1942, 56 Stat. 192, Ch. 207).

The Court dismissed the action because the complaint failed to state a cause for relief in the nature of equity.

The Principles Involved Are Fundamental.

Plaintiffs sought relief in equity because of the lack of a perfect legal remedy. In other words, their remedy at law was not plain, adequate and complete. Whether plaintiffs were consistent in seeking the aid of a court of equity is doubtful, for they pray in the alternative for a money judgment.

Nevertheless, the Court acts *in personam* and not *in rem*. The fund which came into the hands of the respondent is gone. There is no *res*. Therefore, the Chancellor's only method of enforcing the decree is by coercing the defendant's obedience by imprisonment for contempt. That is, he can only put the defendant in jail and keep him there until he shall obey. In the Trial Court, this was the ap-

parent situation, the motive of the plaintiffs was clear, and the complaint was properly dismissed, but only on the grounds that the complaint failed to state a cause for relief in the nature of equity. And this was the sole question in the United States Court of Appeals for the District of Columbia. The action of the Trial Court was affirmed.

Did the Act Establishing the Municipal Court for the District of Columbia Confer Upon It Equitable Jurisdiction.

The opinion of the Court below on the question of equitable jurisdiction of the Municipal Court for the District of Columbia was not necessary to a decision of the case. The petitioner contends, apparently, that the action, or the failure to act, of the courts whose jurisdiction was affected by the act, is indicative of or points to an interpretation of the act. However, it is not what has been done under the statute, but what may or can be done, that is controlling.

Petitioner's statements that a period of more than a year and seven months intervened without realization by the Municipal Court for the District of Columbia that it was an equity court (certainly without the promulgation by it of rules of procedure adapted to the exercise of equitable jurisdiction), is, at least, a statement without foundation in fact.

Immediately upon the confirmation of the Chief Judge of the Municipal Court for the District of Columbia, that official forthwith entered upon his duty of promulgating rules of procedure under the mandate of the act. A committee of judges of that court was appointed by the Chief Judge to study the matter and promulgate a set of rules.

The Chief Judge invited a committee of lawyers to likewise make a study and advise the Court. Over the intervening period the committees met on numerous occasions, and on some occasion met together. No less than three completed drafts were prepared. The Chief Judge, anxious that the proposed rules have the consideration of all interested parties, has at this writing called a public meeting for the near future at which the final draft is to be proposed and the consideration of all interested groups invited.

It is true that the committees, in studying the proposed rules, and in following the mandate of the act that the Federal rules of Civil Procedure be applied to the new court as far as practicable, considered the extent of the equitable jurisdiction of the new court. The determination of the committees as to whether such application was or was not intended by the act, throws no light on its interpretation or meaning. There were many problems confronting the drafters of the rules:

First, the Municipal Court in its organization was unlike the District Court in many respects. The Municipal Court disposes of more cases in a single day than the District Court has to consider over a period of months. In addition to the regular business of the Court, there are separate branches handling small claims and landlord and tenant matters. The regular business too is classified; cases under $500.00 receiving special treatment because technical rules of pleadings are not required. The time fixed for the return of the summons is computed from the day of filing of the suit; in the District Court, from the day of the service of process. In the Municipal Court cases may be tried and disposed of on the return day; there is no set calendar. Such considerations could not be overlooked in conforming the Federal Rules to the Municipal Court.

Second, the Municipal Court does not have the machinery to handle the many types of cases falling within the jurisdiction of the District Court. The Municipal Court has not the adjuncts such as the Auditor, the Domestic Relations Commissioner, the Motion's Commissioner, and other aides. There is no provision for the appointment of receivers, trustees and the like.

Third, there are many statutes of the United States wholly inapplicable to the Municipal Court, the application of which are provided for in the Federal Rules. So, too, there were special provisions governing procedure in District Courts where the large territory covered by the court's jurisdiction required such rules, such as the service of process, personally and by mail, taking of depositions and the like, a situation not contemplated for a District of Columbia Court whose jurisdiction is confined to the "ten-mile-square."

Therefore, it was a serious consideration of the foregoing problems that consumed the time in promulgating the rules of practice and procedure for the Municipal Court, and not because any doubt existed in the minds of lawyers or judges as to applicability of equity.

If It Is the Intention of the Legislature to Confer Jurisdiction, Lack of Machinery Is No Bar.

If it was the intent of the Legislature to confer jurisdiction upon the Municipal Court for the District of Columbia of civil actions, in their nature equitable, the lack of machinery is no bar especially since "the goal we seek is a simplified practice which will strip procedure of unnecessary forms, technicalities, and distinctions, and permit the advance of causes to the decision of their merits with a minimum of procedural encumbrances." Apparently, the

Congress is following out a plan for the organization of the courts of the District of Columbia not only to attain the goal sought, but to meet a need of the future in the administration of law in the District of Columbia.

Conclusion.

Finally, it is submitted that the decision of the court below was correctly based upon considerations affecting fundamental and well-established principles of law, and the petition for certiorari should therefore be denied. The Court's attention should also be invited to the fact that the matter involved herein is the subject of a compromise settlement involving other matters between the parties, and that the case here is, therefore, moot.

Respectfully submitted,

JACOB N. HALPER,
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Office - Supreme Court, U. S.
APR 25 1944
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ROBERT F. KLEPINGER, MIRIAM KLEPINGER, AARON W. KLEPINGER, WARREN P. KLEPINGER, AND GEORGE F. EVANSON,

Petitioners,

v.

FRED B. RHODES,

Respondent.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

To the Chief Justice of the United States and the Associate Justices of the Supreme Court:

At page 1 of Respondent's brief it is stated:

"(4) The case is moot."

At page 6 thereof, in the "Conclusion", it is stated:

> "The Court's attention should also be invited to the fact that the matter involved herein is the subject of a compromise settlement involving other matters between the parties and that the case here is, therefore, moot."

Obviously, the attorney for petitioners cannot allow those statements to stand unanswered.

This cause is not moot, and representations to that effect by the respondent-attorney through his counsel are untrue.

At page 2 of Respondent's brief, there is a reference to the specific fund out of which the Respondent had promised and engaged to pay $1980 in discharge of his admitted obligation to the petitioners. (R. 8, 9.) Such reference is this: "The fund which came into the hands of the respondent is gone. There is no res." But in the petitioners' complaint it is alleged,—and Respondent's motion to dismiss admits the allegation for all the purposes of this litigation,—that the Respondent represented that

> "*He had in his possession* as a part of such fee the sum of $1980 and purposed and intended to disburse it as provided in said assignment, but stated that he would retain it in his possession, until the said Robert F. Klepinger had fulfilled conditions as follows" etc. (R. 10, 12.)

Respondent is now trying to answer the complaint by his brief in this Court. Or is he testifying in this Court by proxy,—by his attorney, who is responsible to this Court for the factual representations made in Respondent's brief? Moreover, Respondent has the temerity to say at pages 2 and 3 of his brief that "In the Trial Court, this was the apparent situation", (i.e., that it was apparent to the trial court that 'The fund which came into the hands of the respondent is gone. There is no res.') He implies that the trial court adjudged the case in disregard of the facts alleged in the complaint which he had admitted for all the purposes of a hearing and determination in the trial court.

In other words, Respondent told the trial court that he had the trust fund. He asserts now in this Court that it "is gone."

Petitioners forbear from further comments on the contents of Respondent's brief in the conviction that this Court will

> Order Respondent to prove his repeated representation to this Court that "The case is moot", or retract it, and, in default of either,
>
> Issue such order as will appropriately discipline or censure for abuse of the right of a respondent to a petition for certiorari to file a brief in opposition.

Wantonly or recklessly made charges that this Court has been petitioned to hear and determine a moot case should neither be ignored nor condoned.

Respectfully submitted,

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